

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
M. DYER & SONS, INC.)
Notice of Failure to Comply)
With Hawaii Revised Statutes)
and Commission's Regulations)
Order to Show Cause Why)
Respondent's Operating)
Authority Should Not Be)
Suspended or Revoked.)
_____)

DOCKET NO. 02-0256

DECISION AND ORDER NO. 20243

Filed June 19, 2003
At 2:00 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

FILED
DIV. OF CONSUMER AFFAIRS
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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M. DYER & SONS, INC.) Docket No. 02-0256
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Notice of Failure to Comply) Decision and Order No. 20243
With Hawaii Revised Statutes)
and Commission's Regulations)
Order to Show Cause Why)
Respondent's Operating)
Authority Should Not Be)
Suspended or Revoked.)
_____)

DECISION AND ORDER

I.

On May 8, 2003, the duly appointed hearings officer issued Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer (recommended decision) regarding the above-entitled matter. The recommended decision was served upon M. DYER & SONS, INC. (Respondent) on May 8, 2003, via first class mail. Respondent did not file written exceptions to the recommended decision.

On May 13, 2003, Respondent paid \$500.00 in civil penalties as set forth in the recommended decision. Based on the above, the commission finds that Respondent has fully complied, although belatedly, with the motor carrier laws, rules, and regulations, and concludes that the portion of the recommended decision that sought to affirm the civil penalty should be modified to acknowledge Respondent's compliance.

Accordingly, upon a review of the entire record in this matter and pursuant to Hawaii Revised Statutes § 269-6, we

conclude that the recommended decision, except as modified herein and attached hereto as Exhibit A, should be adopted as the commission's final decision and order in this matter. Moreover, in light of Respondent's prompt payment of the civil penalty, we conclude that this matter should be closed.

II.

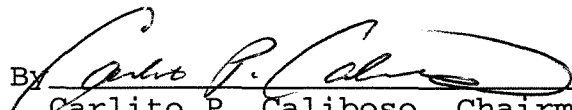
THE COMMISSION ORDERS:


1. The recommended decision regarding, except as modified herein and attached hereto as Exhibit A, is adopted as the commission's final decision and order in this matter.

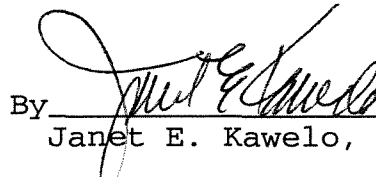
2. This docket is closed.

DONE at Honolulu, Hawaii the 19th day of June, 2003.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

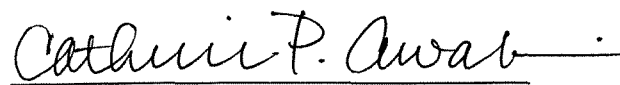
By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

M.Dyer:la

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)		
M. DYER & SONS, INC.)	DOCKET NO. 02-0256
)	
Notice of Failure to Comply)	FINDINGS OF FACT
With Hawaii Revised Statutes)	CONCLUSIONS OF LAW, AND
and Commission's Regulations)	RECOMMENDED DECISION
Order to Show Cause Why)	AND ORDER OF
Respondent's Operating)	HEARINGS OFFICER
Authority Should Not Be)	
Suspended or Revoked.)	
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FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED DECISION AND ORDER OF HEARINGS OFFICER

I.

INTRODUCTION

By Order No. 19567, filed on September 30, 2002, M. DYER & SONS, INC., (Respondent), was ordered to appear before the commission on October 29, 2002, at 9:00 a.m. to show cause why Respondent's certificate of public convenience and necessity (CPCN) number 0137-C should not be suspended or revoked for failing to pay the penalty imposed by Citation No. 4427043 (citation), issued to Respondent on June 3, 1997.¹

¹Pursuant to Hawaii Administrative Rules (HAR) § 6-68-21(f)(1), the citation was deemed to be a final order of the commission since Respondent neither paid the civil penalty within 15 days of, nor requested a contested hearing within 20 days from the receipt of the citation.

An order to show cause hearing (hearing) was held at 9:00 a.m. on October 29, 2002, at the Public Utilities Commission Hearing Room, 465 South King Street, Room B-3. Rebecca Parker, Respondent's Vice-President and Chief Executive Officer appeared on behalf of Respondent.² Hearings officer Benedyne S. Stone presided over the hearing.

Based upon a review of the record and the testimony presented at the hearing, the issue is whether Respondent's CPCN should be suspended or revoked for Respondent's failure to pay the civil penalty associated with the citation, in violation of the State of Hawaii (State) motor carrier laws, rules, and regulations.

Having considered the testimony and other evidence presented at the hearing, and the entire record in this matter, this hearings officer hereby renders the following findings of fact, conclusions of law, and recommended decision and order.

II.

FINDINGS OF FACT

1. On June 3, 1997, Citation No. 4427043 (the citation) was issued to Respondent for operating an improperly marked motor vehicle, in violation of Hawaii Revised Statutes (HRS) § 271-29 and HAR § 6-62-20.

²Members of the commission's audit staff were sworn in and remained present during the hearing in the event they would be called upon to testify in the instant matter.

2. Since Respondent did not pay the citation within 15 days of its receipt and did not request a contested hearing on the citation, the citation was deemed a final order of the commission.³

3. On June 29, 1999, the commission sent Respondent a Bill for Collection for the payment of its outstanding civil penalty.⁴

4. By letter dated July 15, 1999, Respondent informed the commission that it declined to pay the civil penalty.⁵

5. On July 27, 1999, the commission sent Respondent a second Bill for Collection for payment of its civil penalty.

6. As of the date of the hearing, Respondent had not complied with the commission's order to pay the civil penalty, and thus, Order No. 19567 was issued.

7. At the hearing, Respondent requested that the civil penalty be waived.

³Id. at 1.

⁴Pursuant to HAR § 6-61-48, this hearings officer takes official notice of certain facts contained in the commission's motor carrier files.

⁵On July 15, 1999, Respondent was under a previous ownership. In its letter, Respondent argued that it would not pay the civil penalty because, among other things, the statute of limitations prevented the commission from collecting the penalty. Pursuant to HRS § 657-1.5, however, unless the State is specifically subject to a limitation period, no limitation of actions shall bar the maintenance of any action on behalf of the State and its agencies. In the instant case, the commission is not subject to any specific limitation period preventing it from collecting the civil penalty.

III.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, this hearings officer makes the following conclusions of law. Any findings of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

1. HRS § 271-19 and HAR § 6-68-32(b) authorizes the commission, after notice and hearing, to suspend or revoke any CPCN, in part or in whole, if the holder is found to be in violation of any of the provisions of chapter 271, HRS.

2. HAR § 6-68-21 authorizes the commission, or its enforcement officer, to issue a civil citation to any person violating, allegedly violating, or suspected of violating any regulatory law.

3. HRS § 271-27(h) authorizes the commission to impose a civil penalty against a motor carrier who fails, or refuses to comply with any provision of chapter 271, HRS, or any rule, requirement, or order of the commission.

4. HAR § 6-68-21(f)(1) provides that: (1) a citation is deemed a final order of the commission where a person receiving a citation does not pay the civil penalty within 15 days from the receipt of the citation and does not submit a timely written request for a hearing; and (2) non-payment of the civil penalty within 15 days from the commission's second bill for collection constitutes a default.

5. HAR § 6-68-23(c) authorizes the commission to impose the maximum penalty authorized under the regulatory law where a default has occurred.

IV.

RECOMMENDED DECISION AND ORDER

1. Based upon the aforementioned conclusions of law, this hearings officer recommends that the civil penalty imposed upon Respondent through Citation No. 4427043, should be AFFIRMED.

2. There were no mitigating circumstances to support waiving the civil penalty, thus, Respondent should be made to pay the civil penalty of \$500.00 in full.

3. This hearings officer also recommends that Respondent's civil penalty should be paid to the commission in cash, or by cashier's check or money order within 15 days of the commission's final order in this matter.

4. Should Respondent not pay its civil penalty in full within 15 days of the commission's final order in this matter, this hearings officer recommends that Respondent's CPCN be suspended or revoked.

5. Finally, this hearings officer recommends that Respondent familiarize itself with the motor carrier laws, rules, and regulations. In particular, the State of Hawaii motor carrier law does not exempt motor carriers hauling household

goods pursuant to a contract with the Department of Defense from regulation.⁶

DATED: Honolulu, Hawaii this 8th day of May,
2003.



Benedyne S. Stone
Hearings Officer
Public Utilities Commission

DOCKET NO. 02-0256

Dyer:la

⁶In its testimony, Respondent implied that its activities were outside the commission's jurisdiction because the citation involved an employee of Respondent providing contract hauling of household goods for the Department of Defense, and was not a "for hire" activity. See Transcript of Proceedings at 29 and 31.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS (VIA PICKUP)
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

REBECCA PARKER,
VICE-PRESIDENT & CEO
M. DYER & SONS, INC
98-054 Kuleana Road
Pearl City, HI 96782



Leatrice G. Asahi
Clerk

DATED: MAY 8th, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20243 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

M. DYER & SONS, INC.
98-054 Kuleana Road
Pearl City, HI 96782

BENEDYNE S. STONE
HEARINGS OFFICER
PUBLIC UTILITIES COMMISSION
465 S. King Street, Room 103
Honolulu, HI 96813



Karen Higashi

DATED: June 19, 2003